

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

JAVIER ANTONIO CHIRINO MORENO,	§	
	§	
Plaintiff,	§	Civil Action No. 10-cv-434
	§	
v.	§	Jury Demanded
	§	
GENTER'S DETAILING INC. dba	§	
GENTER'S AUTO DETAILING INC. AND	§	
ROGER GENTER	§	
	§	
Defendants.	§	

PLAINTIFF'S ORIGINAL COMPLAINT

Plaintiff, Javier Antonio Chirino Moreno ("Plaintiff"), brings this cause to recover unpaid overtime wages from Defendants Genter's Detailing Inc. dba Genter's Auto Detailing, Inc. and Roger Genter ("Defendants") and respectfully show the Court as follows:

I. Nature of Suit

1. Defendants violated the Fair Labor Standards Act, 29 U.S.C. § 200 *et seq* by failing to compensate Plaintiffs at time and one half his regular rate for hours worked in excess of forty hours per week. Accordingly, Plaintiff brings this action to recover unpaid overtime compensation under Section 216(b) of the FLSA.

II. The Parties

2. Plaintiff Javier Antonio Chirino Moreno is a resident of Dallas County, Texas.

3. Defendant Genter's Detailing Inc. dba Genter's Auto Detailing, Inc. is a corporation organized under the laws of the State of Texas with its principal place of business located at 3812 Landsdowne Drive, McKinney, Texas 75050. Genter's Detailing can be served

with process by serving its registered agent Roger Genter at 3812 Landsdowne Drive, McKinney, Texas 75050.

4. Defendant Roger Genter an individual, is the President of Genter's Detailing who resides in Texas, and whose primary place of business is located at 3812 Landsdowne Drive, McKinney, Texas 75050 and is an employer within the meaning of the FLSA, as he acts directly or indirectly in the interest of Genter's Detailing, in relation to Plaintiff, and has economic and operational control over Genter's Detailing and its business in Texas. Defendant Genter may be served by serving him at 3812 Landsdowne Drive, McKinney, Texas 75050.

III. Jurisdiction

5. The Court has jurisdiction over the subject matter of this action under 29 U.S.C. § 216(b).

6. Plaintiff's claims arise under Section 6(a), 7(a)(1), 15 and 16 of the FLSA. 29 U.S.C. §§ 206(a), 207(a)(1), 215 and 216. In connection with the acts and courses of conduct alleged herein, Plaintiff engaged in commerce or in the production of goods for commerce. Further, Defendants are employers who engage in commerce or the production of goods for commerce and, are therefore, governed by the FLSA.

IV. Venue

7. Venue is appropriate in the United States District Court for the Northern District of Texas, Dallas Division, because Defendants have significant contacts with this district and the events that give rise to this cause of action occurred in this district.

V. Defendants Are Covered by FLSA

8. Defendants are employers within the meaning of § 3(d) of the FLSA, 29 U.S.C. § 203(d).

9. At all material times, Defendants have been an enterprise within the meaning of § 3(r) of the FLSA, 29 U.S.C. 203(r).

10. At all material times, Defendants have been an enterprise engaged in commerce or in the production of goods for commerce within the meaning of § (s)(1) of the FLSA, 29 U.S.C. § 203(s)(1) because they have had employees engaged in commerce or in the production of goods for commerce, or have employees that handle, sell, or otherwise work on goods or materials that have been moved in or produced for commerce by any person and Defendants are an enterprise whose annual gross sales made or business done is not less than \$500,000.00 (exclusive of excise taxes at the retail level that are separately stated). 29 U.S.C. § 203(s)(1).

11. At all material times, Plaintiff was an individual employee who was engaged in commerce or in the production of goods for commerce as required by 29 U.S.C. §§ 206-207.

VI. Facts

A. Factual Background

12. Genter's Detailing employs laborers to provide make ready services at car dealerships in Dallas, Denton, Plano, Lewisville, Carrollton, Grapevine, Garland, and McKinney, Texas. Genter's Detailing pays its make ready laborers an hourly rate for all hours that they work. Genter's Detailing does not pay its employees overtime for the hours that they work over forty hours per week.

13. No exemption excuses Defendants from paying Plaintiff at a rate of time and one-half for the hours that he worked over forty (40) hours per week nor have Defendants made a good faith effort to comply with the FLSA. Rather, Defendants knowingly, willfully or with reckless disregard carried out their illegal pattern or practice of failing to pay time and a half for hours worked in excess of forty (40) hours per week.

VII. Causes of Action

A. Violation of FLSA—Failure to Pay Overtime

14. Plaintiff incorporates herein by reference all allegations contained in the above paragraphs.

15. Defendants violated the provisions of Section 7 and 15(a)(2) of the FLSA, 29 U.S.C. §§ 207, 215(a)(2), by employing Plaintiff for workweeks longer than 40 hours, without compensating them for their employment in excess of 40 hours in such work weeks at rates not less than one and one-half the regular rates at which they were employed.

16. Defendants did not adequately keep track of Plaintiff's work hours, even though Plaintiff was a non-exempt employees for overtime purposes as outlined under the FLSA.

17. Plaintiff has been damaged by these violations of 29 U.S.C. 207(a).

18. Defendants' violations of U.S.C. 207(a) were repeated, willful and intentional.

19. Defendants violated the monetary provisions of the FLSA, as alleged herein and as a result, Plaintiff is entitled to recover unpaid overtime compensation and an equal amount in liquidated damages under Section 16(c) of the FLSA, 29 U.S.C. § 216(c).

20. Plaintiff is also entitled to recover their reasonable attorneys' fees and costs of this action as, provided by Section 15 of the Act, 29 U.S.C. § 215(b).

XIII. Demand for Jury Trial

21. Plaintiff asserts his right under the Seventh Amendment to the United States Constitution and demands, in accordance with Federal Rule of Civil Procedure 38, a trial by jury on all issues.

IX. Prayer

22. Wherefore, Plaintiff respectfully requests judgment to be entered in their favor and that the Court enter an order:

- a. Finding Defendants liable for overtime compensation found by the Court to be due Plaintiffs;
- b. Finding Defendants liable for an equal amount as liquidated damages;
- c. Reasonable attorneys' fees, costs, and expenses of this action; and
- d. Such other and further relief as may be allowed at law and in equity.

Respectfully submitted,

s/Maricela Siewczynski

Maricela Siewczynski

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Electronic mail: maricela@texemploymentlaw.com

Counsel for Plaintiff

*JS 44 (TXND Rev. 2/10)

CIVIL COVER SHEET

The JS 44 civil coversheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS Javier Antonio Chirino Moreno (b) County of Residence of First Listed Plaintiff <u>Dallas</u> (EXCEPT IN U.S. PLAINTIFF CASES) (c) Attorney's (Firm Name, Address, and Telephone Number) Maricela Siewczynski, Siewczynski Law Firm PLLC 6318 Gaston Avenue, Ste. 201 Dallas, Texas 75214 214-634-9990	DEFENDANTS Genter's Detailing Inc. dba Genter's Auto Detailing Inc. and Roger Genter County of Residence of First Listed Defendant <u>Collin</u> (IN U.S. PLAINTIFF CASES ONLY) NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED. Attorneys (If Known)
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II. BASIS OF JURISDICTION (Place an "X" in One Box Only) <input type="checkbox"/> 1 U.S. Government Plaintiff <input type="checkbox"/> 2 U.S. Government Defendant <input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) <input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)	III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant) (For Diversity Cases Only) <table style="width: 100%;"> <tr> <td style="width: 33%;">Citizen of This State</td> <td style="width: 33%;">PTF <input type="checkbox"/> 1 DEF <input type="checkbox"/> 1</td> <td style="width: 33%;">Incorporated or Principal Place of Business In This State</td> <td style="width: 33%;">PTF <input type="checkbox"/> 4 DEF <input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td>PTF <input type="checkbox"/> 2 DEF <input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business In Another State</td> <td>PTF <input type="checkbox"/> 5 DEF <input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td>PTF <input type="checkbox"/> 3 DEF <input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td>PTF <input type="checkbox"/> 6 DEF <input type="checkbox"/> 6</td> </tr> </table>	Citizen of This State	PTF <input type="checkbox"/> 1 DEF <input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	PTF <input type="checkbox"/> 4 DEF <input type="checkbox"/> 4	Citizen of Another State	PTF <input type="checkbox"/> 2 DEF <input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	PTF <input type="checkbox"/> 5 DEF <input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	PTF <input type="checkbox"/> 3 DEF <input type="checkbox"/> 3	Foreign Nation	PTF <input type="checkbox"/> 6 DEF <input type="checkbox"/> 6
Citizen of This State	PTF <input type="checkbox"/> 1 DEF <input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	PTF <input type="checkbox"/> 4 DEF <input type="checkbox"/> 4										
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Citizen or Subject of a Foreign Country	PTF <input type="checkbox"/> 3 DEF <input type="checkbox"/> 3	Foreign Nation	PTF <input type="checkbox"/> 6 DEF <input type="checkbox"/> 6										

IV. NATURE OF SUIT (Place an "X" in One Box Only)					
CONTRACT <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	TORTS PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	FORFEITURE/PENALTY <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input checked="" type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	BANKRUPTCY <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	OTHER STATUTES <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat. TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition			

V. ORIGIN (Place an "X" in One Box Only)						
<input checked="" type="checkbox"/> 1 Original Proceeding	<input type="checkbox"/> 2 Removed from State Court	<input type="checkbox"/> 3 Remanded from Appellate Court	<input type="checkbox"/> 4 Reinstated or Reopened	<input type="checkbox"/> 5 Transferred from another district (specify)	<input type="checkbox"/> 6 Multidistrict Litigation	<input type="checkbox"/> 7 Appeal to District Judge from Magistrate Judgment

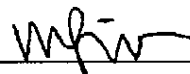
VI. CAUSE OF ACTION	Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): <u>29 USC 201 et seq</u> Brief description of cause: <u>Fair Labor Standards Act</u>
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VII. REQUESTED IN COMPLAINT:	<input type="checkbox"/> CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23	DEMAND \$	CHECK YES only if demanded in complaint: JURY DEMAND: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
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VIII. RELATED CASE(S) (See instructions) PENDING OR CLOSED:	JUDGE _____	DOCKET NUMBER _____
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DATE
03/03/2010

SIGNATURE OF ATTORNEY OF RECORD



FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____